

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 692

Introduced by Assembly Member Charles Calderon

February 26, 2009

An act to amend Section 19503 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 692, as amended, Charles Calderon. Taxation: corporate reorganizations: built-in losses.

The Corporation Tax Law, in specified conformity to federal income tax laws, imposes certain limitations on the use of built-in losses in conjunction with corporate reorganizations.

This bill would clarify that a specified federal administrative notice relating to those limitations does not apply for purposes of California law. *This bill would also clarify the Franchise Tax Board's authority to promulgate regulations relating to specified federal income tax interpretations.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares the
- 2 following:
- 3 (1) The Personal Income Tax Law (Part 10 (commencing with
- 4 Section 17001) of Division 2 of the Revenue and Taxation Code)
- 5 and the Corporation Tax Law (Part 11 (commencing with Section

1 23001) of Division 2 of the Revenue and Taxation Code) provide
2 for specified conformity to various referenced provisions of the
3 federal Internal Revenue Code, as enacted as of a specified date.

4 (2) Those laws provide that for taxable years beginning on or
5 after January 1, 2005, the conformity date specified in California
6 law for those referenced Internal Revenue Code sections is January
7 1, 2005, except as otherwise specifically provided.

8 (3) Included among the federal provisions conformed to as
9 enacted as of January 1, 2005, are the provisions of Section 382
10 of the Internal Revenue Code, relating to limitations on net
11 operating loss carryforwards and certain built-in losses following
12 ownership change.

13 (4) As enacted as of January 1, 2005, Section 382 of the Internal
14 Revenue Code applied to financial institutions, and Section 382
15 included no specific authority for regulatory actions by the Internal
16 Revenue Service or the Department of the Treasury to exempt
17 banks or other financial institutions from its provisions.

18 (5) On October 20, 2008, the Internal Revenue Service issued
19 Notice 2008-83, 2008-42 I.R.B. 905, stating that “[f]or purposes
20 of section 382(h), any deduction properly allowed after an
21 ownership change (as defined in section 382(g)) to a bank with
22 respect to losses on loans ~~for~~ or bad debts (including any deduction
23 for a reasonable addition to a reserve for bad debts) shall not be
24 treated as a built-in loss or a deduction that is attributable to periods
25 before the change date.”

26 (6) Notice 2008-83, which precludes the application of
27 provisions of Section 382 of the Internal Revenue Code to financial
28 institutions, constitutes a substantive change to the application of
29 Section 382 of the Internal Revenue Code, as enacted as of January
30 1, 2005.

31 (7) This state conformed to Section 382 of the Internal Revenue
32 Code, as enacted as of January 1, 2005, but the Legislature’s action
33 in conforming to Section 382 of the Internal Revenue Code did
34 not contemplate the substantive change in application of these
35 provisions set forth in Notice 2008-83.

36 (8) (A) *Section 1261 of the American Recovery and*
37 *Reinvestment Act of 2009 (Public Law 111-5), which was signed*
38 *by President Barack Obama on February 17, 2009, made the*
39 *following congressional findings:*

1 *(i) The delegation of authority to the Secretary of the Treasury*
2 *under Section 382(m) of the Internal Revenue Code of 1986 does*
3 *not authorize the secretary to provide exemptions or special rules*
4 *that are restricted to particular industries or classes of taxpayers.*

5 *(ii) Internal Revenue Service Notice 2008-83 is inconsistent*
6 *with the congressional intent in enacting such Section 382(m).*

7 *(iii) The legal authority to prescribe Internal Revenue Service*
8 *Notice 2008-83 is doubtful.*

9 *(iv) However, as taxpayers should generally be able to rely on*
10 *guidance issued by the Secretary of the Treasury, legislation is*
11 *necessary to clarify the force and effect of Internal Revenue Service*
12 *Notice 2008-83 and restore the proper application under the*
13 *Internal Revenue Code of 1986 of the limitation on built-in losses*
14 *following an ownership change of a bank.*

15 *(B) Based on these congressional findings, Section 1261 limits*
16 *the force and effect of Internal Revenue Code Notice 2008-83 to*
17 *the period commencing with the date the notice was issued and*
18 *ending on January 16, 2009, as provided.*

19 *(C) The congressional findings provide additional confirmation*
20 *that California did not, and should not, conform to the substantive*
21 *changes to Section 382 of the Internal Revenue Code that were*
22 *attempted to be made by Internal Revenue Service Notice 2008-83.*

23 (b) Inasmuch as the Legislature has determined that the changes
24 set forth in Notice 2008-83 are inconsistent with, and in conflict
25 with, the intent of the Legislature in conforming with Section 382
26 of the Internal Revenue Code, the Legislature makes the following
27 finding and directs the Franchise Tax Board to apply it for purposes
28 of the Personal Income Tax Law and the Corporation Tax Law:

29 (1) Notice 2008-83, relating to application of Section 382(h) of
30 the Internal Revenue Code to banks, and any other administrative
31 guidance issued by the Internal Revenue Service after October 20,
32 2008, and any federal Treasury regulations promulgated after
33 October 20, 2008, which have the same or similar effect regarding
34 the application of Section 382 of the Internal Revenue Code to
35 banks, shall not apply for purposes of the Personal Income Tax
36 Law and the Corporation Tax Law.

37 (2) Paragraph (1) shall apply to the same taxable periods to
38 which any federal guidance described in that subdivision is
39 applicable.

1 *SEC. 2. Section 19503 of the Revenue and Taxation Code is*
2 *amended to read:*

3 19503. (a) The Franchise Tax Board shall prescribe all rules
4 and regulations necessary for the enforcement of Part 10
5 (commencing with Section 17001), Part 10.7 (commencing with
6 Section 21001), Part 11 (commencing with Section 23001), and
7 this part and may prescribe the extent to which any ruling
8 (including any judicial decision or any administrative determination
9 other than by regulation) shall be applied without retroactive effect.

10 (b) (1) Except as otherwise provided in this subdivision, no
11 regulation relating to Part 10 (commencing with Section 17001),
12 Part 10.7 (commencing with Section 21001), Part 11 (commencing
13 with Section 23001), or this part shall apply to any taxable year
14 ending before the date on which any notice substantially describing
15 the expected contents of any regulation is issued to the public.

16 (2) Paragraph (1) shall not apply to either of the following:

17 (A) Regulations issued within 24 months of the date of the
18 enactment of the statutory provision to which the regulation relates.

19 (B) Regulations issued within 24 months of the date that
20 temporary or final federal regulations with respect to statutory
21 provisions to which California conforms are filed with the Federal
22 Register.

23 (3) The Franchise Tax Board may provide that any regulation
24 may take effect or apply retroactively to prevent abuse.

25 (4) The Franchise Tax Board may provide that any regulation
26 may apply retroactively to correct a procedural defect in the
27 issuance of any prior regulation.

28 (5) The limitation of paragraph (1) shall not apply to any
29 regulation relating to the Franchise Tax Board's policies, practices,
30 or procedures.

31 (6) The limitation of paragraph (1) may be superseded by a
32 legislative grant of authority to the Franchise Tax Board to
33 prescribe the effective date with respect to any regulation.

34 (7) The Franchise Tax Board may provide for any taxpayer to
35 elect to apply any regulation before the dates specified in paragraph
36 (1).

37 (8) *The Franchise Tax Board may provide that any federal*
38 *income tax regulation, rule, notice, or other federal interpretation*
39 *of federal income tax laws shall not apply in both of the following*
40 *circumstances:*

- 1 (A) *The legal authority of the federal interpretation is doubtful.*
- 2 (B) *Automatic conformity to the federal interpretation may*
- 3 *infringe on the Legislature's authority to make laws involving*
- 4 *significant policy issues.*
- 5 (c) The amendments made by the act adding this subdivision
- 6 are operative with respect to regulations which relate to California
- 7 statutory provisions enacted on or after January 1, 1998.